JD-42-00
Jonesville, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SKD JONESVILLE DIVISION L. P. Case No. 7-CA-42244

and

PAMELA J. COLE, An individual

Richard F. Czubaj, Esq., for the General Counsel.
Susan T. Rapp, Esq. (Abbott, Nicholson, Quilter, Esshaki & Youngblood, P.C.), of Detroit, Michigan, for the Respondent.

DECISION

Statement of the Case

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Hillsdale, Michigan on February 9, 2000. The charge was filed July 23, 1999 and the complaint was issued November 19, 1999.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

Findings of Fact

I. Jurisdiction

Respondent, a corporation, engages in welding and metal stamping at its facility in Jonesville, Michigan, where it annually purchases and receives goods valued in excess of $50,0000 directly from points outside the State of Michigan. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Alleged Unfair Labor Practices

The charging party, Pamela Cole, worked for Respondent from March 1994, until August 1999. In 1995, Cole was actively, and apparently openly, involved in an attempt by the United Autoworkers Union (UAW) to organize Respondent's plant. The Union lost an NLRB representation election that year.

In the fall of 1998, Cole accused two men at Respondent's plant of sexually harassing her. She filed a unfair labor practice related to her allegations which was withdrawn. Respondent conducted an internal investigation which resulted in the issuance of a written warning to one rank and file employee. Respondent did not take disciplinary action against one of its supervisors, who denied Cole's allegations. SKD concluded that in the absence of

witnesses, it could not conclude that sexual harassment had occurred. The supervisor was verbally counseled and provided with a copy of the company's harassment policy.

Facts relating to paragraph 7(a) of the Complaint

Cole testified that early in 1999 a number of employees asked her to contact the UAW to initiate another organizing drive. In mid-February 1999, Kevin Varney, then Cole's supervisor, called her into his office. Also present was, Jeff Hamilton, a rank-and-file employee. I credit the following uncontradicted testimony by Cole as to what was said:

> Varney said he heard that I was going to organize…that the employees wanted me to organize a union and I told him no, I wasn't getting involved, and then they were talking, him and Jeff Hamilton…about people on Workmen's Comp, that they were low life losers and…Jeff Hamilton said that…Varney should fire them all and Varney said he would if he could, and then he told me that it wasn't in my best interests to be getting involved with the union.

Cole said she was not getting involved with the Union and went back to work. No other supervisors talked to Cole about the Union in 1999, and Varney did so only on this one occasion.

Facts relating to paragraph 7(b) and (c), 8 and 9 of the Complaint

Between late February and late April 1999, Pamela Cole had a number of ongoing disagreements with her supervisor, Willie Tabb, Respondent's quality control manager. One of these disputes involved a decision by Tabb to designate the area in which Cole's desk was located as part of a no-smoking area. Cole, who wished to continue smoking at her desk, believed that Tabb was singling her out and harassing her. She may also have argued with Tabb about additional assignments she was being given.

On April 27, 1999, Pat Giampolo, the human resources director of Respondent's parent company, National Material Corporation, came to the SKD Jonesville plant to conduct an orientation session concerning Respondent's new employee handbook. The orientation session, which began at 6:00 a.m., was scheduled for one hour at the beginning of Respondent's first shift.

Giampolo came to meeting with approximately ninety slides which he showed employees during his lecture. The first slide outlined the agenda for the meeting which was attended by approximately 70 to 80 people, including rank and file employees and managers. He asked the employees to hold their questions until the end of his presentation. He then proceeded to go through the handbook section by section.

When Giampolo got to the portion of the handbook dealing with Respondent's harassment policy, Cole, who was sitting in the first row, made a comment in a voice loud enough for Giampolo to hear her. She said that she had been harassed and nobody did anything about it. Giampolo told her that he would talk to her about this after the meeting. Cole made at least one other audible comment, to the effect that her supervisor was harassing her.

There was a short question and answer session after Giampolo concluded his remarks. Then employees came to the front of the room to receive copies of the employee handbook from the plant human resources manager, Rick Sudds, and sign for them. While Sudds

distributed the handbooks at one end of a table, several employees approached Giampolo and SKD president, Dennis Berry, who were standing at the other end of the table.

With four to five other employees, who were waiting to ask questions of Giampolo, standing behind her, Cole told Berry about her sexual harassment complaints. Referring to the supervisor against whom disciplinary action was not taken in the fall 1998, Cole told Berry that she wanted Berry to know that this individual thrust his penis in her face in an office. Referring to the employee who had received a written warning, Cole told Berry that this individual had told her he'd like to pick the flowers off her blouse.[1] She then started talking to Berry and Giampolo about her problems with Willie Tabb.

Giampolo told Cole that her sexual harassment allegations had been resolved and that if she had any new complaints, she should talk to Sudds. Cole left and other employees then approached Giampolo to discuss how certain items in the handbook related to their personal situations.

On April 28, Cole met with Rick Sudds. Afterwards, Sudds met with Willie Tabb and discussed Cole's assertions that Tabb was harassing her.[2] The same morning Giampolo had a conference call with Sudds and Willie Tabb. The three decided to issue Cole a written warning. This warning was presented to Cole on April 30 at a meeting attended by Cole, Sudds and Tabb. The warning referred to Cole's conduct at the April 27 meeting with Giampolo and delineated the following examples of "inappropriate business behavior and responses:"

> 1. Employee responds to every situation she deems unfavorable with a response of harassment towards all parties involved;
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> 2. The employee consistently discusses work-related problems with co-workers instead of their proper party, i.e. the manager or member of management;
>
> 3. Interfacing with other employees, supervisors, and senior management is most always in an inappropriate manner and usually uses an attitude inconsistent with mutual respect.

The warning required that "all work-related problems are to be discussed with the Supervisor. There are no exceptions to this corrective action." It further stated that "[a]ny further activity that results in a counter-productive work situation will be dealt with in the form of disciplinary action, up to and including discharge of employment."

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[1] On the day in question, Cole was wearing a blouse which had a floral design on it.

[2] To the extent that there are discrepancies between the testimony of Sudds and Cole regarding her meetings with management on April 28, 1999, I credit Sudds. I therefore find that she met with Sudds *and* Tabb only on April 30. I deem the differences in their testimony insignificant. The issue herein is whether the warnings issued to Cole, verbal as well as written, are to be interpreted in the context of her individual complaints, or more broadly, to forbid her from discussing with other employees matters of mutual concern.

Analysis

Did Kevin Varney's questions and comments to Pamela Cole violate Section 8(a)(1)?

The General Counsel alleges that Respondent, by Kevin Varney: (1) conveyed to employees the impression that their support for, and activities on behalf of, the Union were under surveillance; (2) that Respondent coercively interrogated Cole about her union activities; and (3) threatened her with adverse consequences because of her support for, and activities on behalf of, the Union.

I conclude that the General Counsel has not established that Varney created an impression that Cole's union activities were under surveillance. The test for making this determination is whether the employee would reasonably assume from the supervisor's statement that his or her union activities had been placed under surveillance, *United Charter Service,* 306 NLRB 150 (1992). Varney said nothing that gave the impression that he or anyone else in Respondent's management was spying on Cole. From his statement, one could just as easily conclude that somebody, who was unsympathetic with the Union, voluntarily informed Varney as to Cole's activities.

In this regard, I would contrast the cases cited by the General Counsel. In *Mountainer Steel, Inc.,* 326 NLRB No. 66 (1998), the context of the supervisor's statement would reasonably have led the employee to believe that the supervisor was eavesdropping on his union-related conversation. This is not so in the instant case. Similarly, in *United Charter Service, supra,* the Board found, due to the detail of his comments, that the statements by the employer's operations manager, Vieira, reasonably suggested to employees that the employer was closely monitoring the degree and extent of their organizing efforts and activities. I conclude that the comment by Varney, herein, did not imply close scrutiny of employee union activities.

With regard to the remaining allegations, not every question asked or comment made by a management official about union activity violates Section 8(a)(1). One must determine whether under all the circumstances of the interrogation or comment, it reasonably tends to restrain, coerce or interfere with rights guaranteed by the Act, *Rossmore House,* 269 NLRB 1176 (1984), enfd. sub nom., *Hotel & Restaurant Employees Local 11 v. NLRB,* 760 F2d. 1006 (9th Cir. 1985). Some of the factors to be considered with regard to interrogations are: (1) the background of the questioning; (2) the nature of the information being sought; (3) the identity of the questioner; and (4) the place and method of the interrogation. I conclude that given all the circumstances of Varney's brief and isolated conversation with Cole about union activities, the General Counsel has not established a Section 8(a)(1) violation.

Weighing heavily in this determination is that the interrogation was a one-time event by a low-level supervisor. Moreover, there is no evidence of other unfair labor practices or anti-union animus. I would contrast the instant case, for example, with that in *Advance Waste Systems,* 306 NLRB 1020 (1992), where a one-time interrogation by a company Vice-President, inside a moving truck, was found to be violative, in conjunction with other expressions of hostility and disapproval of union activity. Other cases distinguishable due to the background of numerous unfair labor practices are *Stoody Co.,* 320 NLRB 18 (1995) [where the questioner was also a high level supervisor] and *American Crane Corp.,* 326 NLRB No. 153 (1998). Furthermore, Cole's testimony indicates that it was well-known that she supported the 1995 union campaign and that management had reason to believe that she would be favorably disposed to another campaign.

Finally, from the brief testimony in the record, I am unable to interpret Varney's observation that it would not be in Cole's best interest to become involved with the Union as a threat. The essence of Varney's remark may be no more than conveying his view that employees at Respondent's facility didn't need a union. The isolated nature of Varney's comment contrasts with those made in the cases cited by the General Counsel. In *Leather Center, Inc.,* 308 NLRB 16, 27 (1992) and *Garney Morris, Inc.,* 313 NLRB 101, 116 (1993), similar comments were found to constitute veiled threats against a backdrop of numerous other unfair labor practices. Given the absence of other expressions of anti-union animus or threats herein, I decline to infer an veiled threat of repercussions to Cole if she persisted in attempts to organize a union. I therefore dismiss paragraph 7(a) of the Complaint in its entirety.

Did Respondent violate Section 8(a)(1) in disciplining Cole on April 30?

The first issue is assessing the written warning given to Pamela Cole is whether it was administered in retaliation for protected activities. Section 7 gives employees the right to engage in concerted activity for the purpose of collective bargaining or *other mutual aid or protection*…(emphasis added). In interpreting this provision, the Board distinguishes between an employee's activities engaged in with or on the authority of other employees (concerted) and an employee's activities engaged in solely by and on behalf of the employee herself (not concerted), *Meyers Industries,(Myers II),* 281 NLRB 882 (1986) aff'd sub nom. *Prill v. N.L.R.B.,* 835 F.2d 1481 (D.C. Cir. 1987), cert den. 487 U.S. 1205 (1988). I conclude that Cole did not engage in any activity for the aid or protection of any employee other than herself.[3] I therefore conclude that she did not engage in concerted activities that are protected by Section 7.

There remains, however, the fact that the written warning issued to Cole, on its face, forbid her from discussing any work-related problems with co-workers. The language of the warning is not limited to problems that pertain only to Cole and facially appears to prohibit her from discussing matters that may be of concern to other employees as well. I conclude that the warning must be read in the context in which it was given. Had Cole been raising issues of concern to anyone other than herself, the warning would be a clear violation of Section 8(a)(1). However, this record indicates that Cole only raised issues that pertained to her. I therefore interpret the warning in this light and find that Respondent did not violate Section 8(a)(1) as alleged.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

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[3] *Whittaker Corp.,* 289 NLRB 933, 934 (1989), relied upon by the General Counsel, is irrelevant to the instant case. The employee is *Whittaker* phrased his remarks as a group, not a personal, complaint. Moreover, his issue with his employer, was clearly, unlike Cole's, a matter of concern to many employees. Cole's complaints were that her sexual harassment allegations had not been resolved to her satisfaction and that her supervisor, Willie Tabb, was not treating her fairly. Her complaints had nothing to do with the wages, hours and working conditions of other employees.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The complaint is dismissed.

Dated, Washington, D.C. March 24, 2000.

Arthur J. Amchan
Administrative Law Judge